

ORIGINAL

FILED

JUN 23 2011

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 OAKLAND DIVISION

19 UNITED STATES OF AMERICA *ex rel.* )  
20 SEAN ROSE, MARY AQUINO, )  
21 MITCHELL NELSON and LUCY )  
STEARNS )

22 Plaintiffs, )

23 v. )

24 STEPHENS INSTITUTE, a California )  
corporation, doing business as ACADEMY )  
25 OF ART UNIVERSITY and DOES 1 )  
through 50, inclusive, )

26 Defendants. )  
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No. C 09-5966-PJH

10ul  
**UNITED STATES' NOTICE OF  
ELECTION TO DECLINE  
INTERVENTION; [PROPOSED  
ORDER]**

**FILED UNDER SEAL**

U.S. NOTICE OF ELECTION TO  
DECLINE INTERVENTION, C09-5966 PJH

1 Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States  
2 notifies the Court of its decision not to intervene in this action.

3 Although the United States declines to intervene, we respectfully refer the Court to 31  
4 U.S.C. § 3730(b)(1), which allows the relators to maintain the action in the name of the United  
5 States; providing, however, that the “action may be dismissed only if the court and the Attorney  
6 General give written consent to the dismissal and their reasons for consenting.” *Id.* The United  
7 States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the  
8 United States only has the right to a hearing when it objects to a settlement or dismissal of the  
9 action. U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir. 1995); U.S. ex rel.  
10 Killingsworth v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

11 Therefore, the United States requests that, should either the relators or the defendants  
12 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the  
13 United States with notice and an opportunity to be heard before ruling or granting its approval.

14 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all  
15 pleadings filed in this action be served upon the United States. The United States also requests  
16 that orders issued by the Court be sent to the Government’s counsel. The United States reserves  
17 its rights to order any deposition transcripts and to intervene in this action, for good cause, at a  
18 later date.

19 Finally, the United States requests that the Court unseal: (1) Relators’ Complaint;  
20 (2) Declaration of Stephen R. Jaffe Re: Potential Breach of Seal (filed June 16, 2011), (3) Notice  
21 of Correction of Misspelled Name of Relator Scott Rose (filed June 16, 2011); (4) Supplemental  
22 Declaration of Stephen R. Jaffe Re: Potential Breach of Seal (filed June 16, 2011); (5) this  
23 Notice of Election to Decline Intervention, with (Proposed) Order lifting the seal, and (6) all  
24 other matters occurring in this action after the date the Court enters the unsealing order. The  
25 United States requests that all other contents of the Court’s file in this matter (including, but not  
26 limited to, any applications filed by the United States for extensions of the sixty-day  
27 investigative period, any applications for partial lifting of the seal, and any orders previously  
28

1 remain under seal and not be made public or served upon the defendants.

2  
3 Dated: June 22, 2011

Respectfully submitted,

4 TONY WEST  
5 Assistant Attorney General

6 MELINDA HAAG  
7 United States Attorney

8  
9 By:

  
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**[PROPOSED] ORDER**

The United States, having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

1. All sealed contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendants, except for (1) the Complaint; (2) Declaration of Stephen R. Jaffe Re: Potential Breach of Seal (filed June 16, 2011), (3) Notice of Correction of Misspelled Name of Relator Scott Rose (filed June 16, 2011); (4) Supplemental Declaration of Stephen R. Jaffe Re: Potential Breach of Seal (filed June 16, 2011); (5) this Order; and (6) the accompanying Notice of Election to Decline Intervention, which are hereby unsealed.

2. The relators shall serve the Complaint upon the defendant, together with this Order and the accompanying Notice of Election to Decline Intervention.

3. The seal is lifted as to all matters occurring in this action after the date of this Order.

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

5. All orders of this Court shall be sent to the United States.

6. Should the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: 4/23/11

  
PHYLLIS J. HAMILTON  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel.  
SEAN ROSE, et al.

Case Number: C 09-5966 PJH

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

STEPHENS INSTITUTE, et al.,

Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 23, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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June 23, 2011



Richard W. Wieking, Clerk

By: Nichole Heuerman